

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

RAYMOND HERRERA, JR., and TABITHA §  
HERRERA, Individually and as Personal §  
Representatives of the Estate of RAYMOND §  
HERRERA, SR. §

*Plaintiffs,* §

v. §

ODFJELL BOW FORTUNE, and her §  
Engines, boilers, tackles, apparel, etc., in rem §

*Defendant.* §

CAUSE NO. \_\_\_\_\_

IN ADMIRALTY

**Plaintiffs' Verified Original Complaint to Seize Vessel**

Plaintiffs Raymond Herrera, Jr., and Tabitha Herrera, Individually and as Personal Representatives of the Estate of Raymond Herrera, Sr., complain of ODFJELL BOW FORTUNE, her engines, boilers, tackles, apparel, etc., *in rem* and would respectfully show the Court the following:

**I.**

**Jurisdiction and Venue**

1. This action falls within the admiralty and maritime jurisdiction of this Court, as will more fully appear, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Specifically, this action is brought pursuant to General Maritime Law and 33 U.S.C. § 905(b) of the Longshore and Harbor Workers' Compensation Act.

2. Venue is proper in this District because the action is *in rem* and the vessel, ODFJELL BOW FORTUNE, is within this District or will be within the District

while the action is pending.

## **II.**

### **Parties**

3. Plaintiffs are residents of the State of Alabama.

4. The ODFJELL BOW FORTUNE is a tanker vessel with IMO Number 9168635. This is the vessel that collided with a fishing boat where Raymond Anthony Herrera was fatally injured. Plaintiffs bring this suit against Defendant *in rem*. On information and belief, the ODFJELL BOW FORTUNE is currently moored in Galveston, Texas at the Texas International Terminal, 4800 Old Port Industrial Rd, Galveston, TX 77554.

## **III.**

### **Nature of the Action**

5. This lawsuit is necessary as a result of injuries that Plaintiffs received on or about January 14, 2020. On or about this date, the ODFJELL BOW FORTUNE collided with a fishing boat, the American f/v Pappy's Pride. As a result of Defendants' negligence, Plaintiffs' father, Raymond Anthony Herrera, was killed.

6. ODFJELL BOW FORTUNE is liable and accountable *in rem* for the injuries sustained by Plaintiffs by reason of the negligence and gross negligence of her own agents, representatives, crew, and/or employees in one or more of the following ways:

- a. Failing to operate the ODFJELL BOW FORTUNE in a safe manner;
  - b. Failing to properly maintain the vessel in a reasonably safe manner;
  - c. Failing to properly inspect, maintain and/or repair the vessel;
  - d. Failing to warn Plaintiff of a danger which was unknown to him, yet known to ODFJELL BOW FORTUNE, or which should have been known in the exercise of reasonable care;
  - e. Failing to maintain parts of the vessel under their active control in a reasonably safe manner;
  - f. violating applicable Coast Guard, OSHA, and/or BSEE rules
  - g. Failing to properly supervise her crew;
  - h. Failing to properly train her employees;
  - i. Failing to provide adequate safety equipment;
  - j. Failing to maintain a safe premises;
  - k. Failing to provide adequate and immediate medical attention; and
  - l. Other acts so deemed negligent.
7. At all relevant times, the vessel was unseaworthy.

8. As a result of said occurrences, Decedent sustained severe physical pain, mental anguish, emotional distress, and other medical problems. He died as a result. Plaintiffs have lost their beloved father. Plaintiffs have sustained in the past and will continue to sustain in the future:

- a. Pre-death physical pain and suffering;
- b. Pre-death mental pain, suffering, and anguish;
- c. Loss of earning capacity and inheritance;

- d. Loss of fringe benefits;
- e. Loss of services and support;
- f. Loss of nurture, guidance, care, and instruction;
- g. Loss of enjoyment of life;
- h. Loss of future pecuniary support;
- i. Loss of society and companionship;
- j. Emotional distress and mental anguish; and
- k. All other damages recoverable under the law.

**IV.**

**Jury Demand**

9. Plaintiff hereby demands a trial by jury.

**V.**

**Prayer**

Plaintiff prays that a warrant for the arrest of the vessel ODFJELL BOW FORTUNE may issue, and that all persons claiming any interest therein may be cited to appear and answer the matter aforesaid; that upon final hearing, Plaintiff has judgment against ODFJELL BOW FORTUNE, in a total sum in excess of the minimum jurisdictional limits of this Court, plus pre-judgment and post-judgment interests, all costs of Court, and that the vessel ODFJELL BOW FORTUNE may be condemned and sold to pay the same; and that Plaintiff may have exemplary damages, and all such other relief, as the Court may deem just and appropriate under the circumstances of the cause.

Respectfully submitted,

ARNOLD & ITKIN LLP

/s/ Jason A. Itkin

JASON A. ITKIN

ARNOLD & ITKIN LLP

Texas State Bar No. 24060816

6009 Memorial Drive

Houston, Texas 77007

Tel: 713-222-3800

Fax: 713-222-3850

[jitkin@arnolditkin.com](mailto:jitkin@arnolditkin.com)

**ATTORNEY FOR PLAINTIFF**

OF COUNSEL:

Cory D. Itkin

Texas State Bar No. 24050808

Ryan S. MacLeod

Texas State Bar No. 24068346

Jacob M. Karam

Texas State Bar No. 24105653

6009 Memorial Drive

Houston, Texas 77007

Telephone: (713) 222-3800

Facsimile: (713) 222-3850

[e-service@arnolditkin.com](mailto:e-service@arnolditkin.com)

[citkin@arnolditkin.com](mailto:citkin@arnolditkin.com)

[rmacleod@arnolditkin.com](mailto:rmacleod@arnolditkin.com)

[jkaram@arnolditkin.com](mailto:jkaram@arnolditkin.com)



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**VERIFICATION**

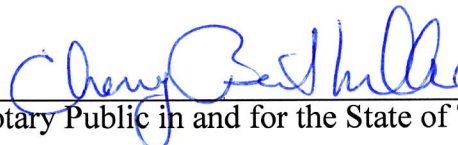
Cory Itkin, after first being duly sworn upon his oath, makes this affidavit and states the following:

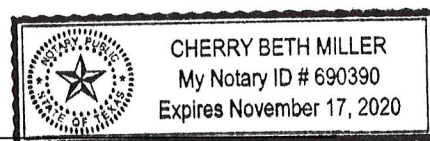
1. My name is Cory Itkin. I am over the age of twenty-one (21) years, am competent to testify to the matters stated herein, have personal knowledge of the facts and statements in this affidavit, and each of the facts and statements is true and correct.
2. I am an attorney who represents the Plaintiffs in this matter.
3. I have read Plaintiff's Verified Original Complaint and know the contents thereof, and the same are true of my own knowledge, except to those matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true. The sources of my information and the grounds of my belief are statements and records furnished to me by the Plaintiff. This verification is being made by me because Plaintiffs are unavailable to do so at this time.

FURTHER, AFFIANT SAITH NOT.

  
Cory Itkin

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, by Cory Itkin, on this 17<sup>th</sup> day of January, 2020, to certify which witness my official hand and seal of office.

  
Notary Public in and for the State of Texas



My Commission Expires: